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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(d) THE RIGHT TO A FAIR TRIAL

Written communication submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1991]

RIGHT TO A FAIR TRIAL: THE EXAMPLE OF CHINA

1. The human rights situation in China with regard to the right to a fair trial is a source of grave concern due to the continued existence of a legal system which is at odds with the International Covenant on Civil and Political Rights and to police and judicial practices which perpetuate gross violations of human rights.

2. National positive law itself contains provisions which are incompatible with the observance of human rights which are nevertheless proclaimed in the Constitution. For example:

(a) The concept of counter-revolutionary crime (fan-geming zui). Articles 90 to 104 of the Penal Code define such crimes very vaguely as "any acts which endanger the People's Republic of China, with the aim of overthrowing the political power of the dictatorship of the proletariat and the present social system" (art. 90). This terminology allows the courts wide discretion in reaching their decisions. Thousands of individuals were convicted of such crimes in 1990;

(b) The principle of non-retroactivity of a more severe law is subject to many restrictions;

(c) The death penalty can be imposed for a very large number of offences (more than 40 offences against persons, property, public safety, etc.). Death sentences are in fact handed down very frequently. The number of persons shot by firing squad each year is estimated (in the absence of statistics) at several thousand;

(d) The presumption of innocence is a principle which is absolutely not recognized.

3. Nor does the judicial system operate in accordance with the requirements of the Covenant. In their preceding report on the right to a fair trial (E/CN.4/Sub.2/1990/34), Mr. S. Chernichenko and Mr. W. Treat pointed out that the independence of the judiciary was a paramount requirement for a fair trial. In China, however, it does not apply, mainly because of the role played by the judicial political commissions, which are directly responsible to the Committee of the Chinese Communist Party and take the most important decisions, coordinate the activities of courts and security agents and appoint judges.

4. The right to a defence is also disregarded. Attorneys, who are too few and do not enjoy any real independence, cannot perform their duties freely. A case in point is that of the lawyers Wang Juntao and Chen Ziming, who have been barred from practising for more than five years. Lawyers have no access to a case file until a few days before the trial, or even until the day of the trial itself. Proceedings are not necessarily public, contrary to the requirement of article 14, paragraph 1, of the Covenant. Independent foreign observers were not admitted to recent trials of pro-democracy activists in Peking in 1991.

6. Since 1983, an expedited procedure has been used in trying persons charged with capital crimes. They are presumed guilty. The investigative and trial procedures are expedited considerably. The decision to follow this procedure is taken by the court prior to the trial of accused "who should be" sentenced to death.

7. The security forces play an important role. Without any judicial supervision, they may place under administrative detention all persons who have committed minor offences or been involved in counter-revolutionary activities. They thus have discretion to detain any person on suspicion. Such detention may last to up to four years (since 1979). It is served in labour re-education camps (laogai).

8. Torture is frequently practised, particularly in interrogation centres (shourongsuo).

9. In addition, the repressive measures against pro-democracy activists continue. The trials held throughout the first half of the year, which culminated in heavy prison sentences, give only a partial idea of the extent of the repression measures, particularly in the provinces. An increasing number of hurriedly conducted trials is being held, allegedly as part of a sweeping anti-crime (termed "hooliganism") campaign. The renewed spate of death sentences is spectacular: more than 100 persons are reported to have been sentenced to death in the month of June alone. Executions take place in public.

10. Consequently, the International Federation of Human Rights (FIDH) is compelled to state that Chinese legislation does not conform to the requirements of the Covenant and runs counter to the procedural guarantees which help to ensure the objectivity and impartiality of trial proceedings. Moreover, police and judicial practice is dependent on flagrant violations of human rights, at a time when a sweeping anti-crime campaign is being conducted and when the Chinese authorities are still opposed to a visit by independent human rights organizations.

11. FIDH also considers that Mr. Chernichenko and Mr. Treat should continue to study the question of the right to a fair trial, taking into account in particular the report on the independence of the judiciary, with a view to shedding further light on the inalienable nature of the right to a fair trial.